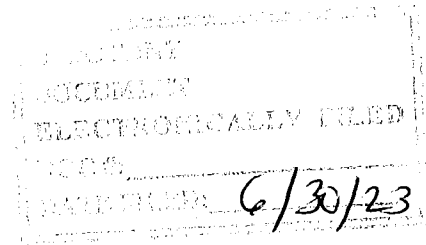


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
YONG BIAO JI, on behalf of himself and  
others similarly situated,

Plaintiff,

v.

NEW AILY FOOT RELAX STATION INC,  
and EILEEN FOOT RELAX STATION INC,  
Defendants.  
-----X

**ORDER**

22 CV 8196 (VB)

Defense counsel's (Ning Ye, Esq.) renewed request to adjourn the initial pretrial conference scheduled for July 6, 2023, at 12:00 p.m. (Doc. #30), is DENIED.

First, Mr. Ye's letter fails to comply with Judge Briccetti's Individual Practices in the same ways his June 28, 2023, letter (Doc. #26) was deficient.

Second, there is no such thing as a special appearance in federal court. See In re Aggrenox Antitrust Litig., 2019 WL 919561, at \*1 n.1 (D. Conn. Feb. 25, 2019) ("Special appearances have been abolished in federal court by Rule 12 of the Federal Rules of Civil Procedure.") (internal citations omitted).

Third, there is no pending motion to dismiss. The Court already granted in part and denied in part defendants' motion to dismiss (Doc. #11), in an Opinion and Order dated May 19, 2023. (Doc. #14). Mr. Ye is incorrect that the answer he filed is also a Rule 12(b) motion. (Doc. #25). Asserting an affirmative defense in an answer that the complaint fails to state a claim is not the same thing as moving to dismiss under Rule 12(b)(6).<sup>1</sup>

Fourth, Mr. Ye's assertion that all of plaintiff's federal claims have been dismissed is incorrect. As is clearly set forth in the Court's May 19 Opinion and Order, plaintiff's FLSA claims accruing on and after September 25, 2019, remain in the case. (Doc. #14 at 15).

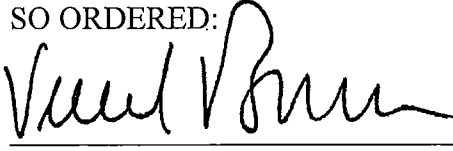
Fifth, as the Court explained in the Order issued yesterday, June 29, 2023 (Doc. #27), plaintiff docketed proof that the Notice of Initial Conference was served on defense counsel by email on May 30, 2023. (Doc. #17-2). Accordingly, Mr. Ye had notice of the date and time of the initial conference on May 30, 2023, and his claim that he did not have notice of the initial conference until June 16, 2023, is incorrect.

Accordingly, the initial pretrial conference remains scheduled for July 6, 2023, at 12:00 p.m., to proceed in person at the White Plains Courthouse, Courtroom 620.

<sup>1</sup> Even if defendants' answer is construed as a motion to dismiss, or alternatively, a motion for reconsideration of the Court's May 19 Opinion and Order, such motion is denied as plainly without merit for the reasons set forth in the May 19 Opinion and Order.

If defendants—which are both corporations—fail to appear at the conference through counsel, the Court will permit plaintiff to seek a certificate of default and move for default judgment against defendants. See Lattanzio v. COMTA, 481 F.3d 137, 139–40 (2d Cir. 2007) (per curiam) (corporations may not appear in federal court without counsel). If Mr. Ye is unable to appear at the initial conference on July 6, he or his clients may arrange for another attorney to appear on defendants’ behalf.

Dated: June 30, 2023  
White Plains, NY

SO ORDERED:  
  
\_\_\_\_\_  
Vincent L. Briccetti  
United States District Judge